Supreme Court, U.S.
FILED

No. 05-703 AUG - 3 2005

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IN THE

Supreme Court of the United States

GERARD ANGULO,

Petitioner,

—against—

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS, STATE OF NEW YORK

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

(1) Does procedural due process, as imposed on the States by the Fourteenth Amendment to the United States Constitution, require that a defendant in a civil proceeding be given an opportunity to discover relevant evidence in his adversary's sole possession before the entry of summary judgment against him.

(2) Does § 3214(b) of New York's Civil Practice Laws and Rules (App., *infra*, 23a-24a), as applied by the New York Supreme Court in this case to deny petitioner any opportunity to conduct discovery prior to the entry of summary judgment against him, violate the due process clause of the Fourteenth Amendment.

LIST OF PARTIES TO THE PROCEEDINGS

The petitioner is Gerard Angulo, a United States citizen and resident San Juan, Puerto Rico.

The respondent is Skadden, Arps, Slate, Meagher & Flom, LLP ("Skadden"), a Delaware limited liability partnership, which has offices in New York, New York and in many other locations.

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PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The decision by New York State Supreme Court Justice Shirley Werner Kornreich granting Skadden summary judgment (App., *infra*, 1a-16a) was entered on November 21, 2003. This decision is not reported.

The appeal from Justice Kornreich's decision was denied by the order (App., *infra*, 19a-20a) of the Appellate Division of the New York State Supreme Court on February 8, 2005. This order is reported at 15 A.D. 3d 226, 788 N.Y.S.2d 846 (1st Dept. 2005).

On April 19, 2005, the Appellate Division of the New York State Supreme Court entered an order (App., *infra*, 17a-18a) denying Angulo's motion for reconsideration of its prior February 8, 2005 order denying the appeal. This order is not reported.

On May 5, 2005, the New York Court of Appeals entered an order (App., *infra*, 21a) denying Angulo's motion for leave to appeal. This order is not reported.

JURISDICTION

The Jurisdiction of the United States Supreme Court is based on 28 U.S.C § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant text of the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the New York Civil Practice Laws and Rules (§§ 3212 and 3214) are set forth in the Appendix (App., *infra*, 22a-24a).

STATEMENT OF THE CASE

A. Prior Procedural History

In 2002, Skadden sued Angulo in United States District Court for the Southern District of New York in an action entitled *Skadden v. Angulo*, 02 Civ. 9322 (RB) (S.D.N.Y.) ("the Federal Fees Action"). (*See* App., *infra*, 25a-27a.) Skadden's lawsuit contended that Angulo owed it a total of $814,749.10 in attorneys fees incurred while representing Angulo in a prior action entitled *Nemazee Capital Corp. v. Angulo Capital Corp.*, 96 Civ. 1023 (RO) ("the *Nemazee* Action"). (App., *infra.*, 1a-2a.) The $814,749.10 Skadden sought to recover was over and above $1,020,014 Angulo had previously paid Skadden for services Skadden had rendered in the *Nemazee* Action. (App., *infra*, 4a.)

In 2003, at the initial scheduling conference in the Federal Fees Action, Skadden requested permission to move for summary judgment *before* the parties engaged in any discovery. Angulo opposed Skadden's request on the grounds that Skadden had, within its exclusive possession, discoverable evidence which would prove that its bills were based, in part, upon falsified time records. United States District Court Judge Richard Berman denied Skadden's request to move immediately for summary judgment, granted Angulo's request for discovery and ordered a 30-day discovery period. Shortly before this discovery was scheduled to begin, Skadden requested and obtained a dismissal of the action without prejudice, based on its assertion that it had "discovered" that federal diversity jurisdiction, in fact, did not exist. (App., *infra.*, 25a-27a)[1]

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[1] Apparently, certain Skadden partners were United States citizens were domiciled overseas. Skadden contended that these partners were neither residents of State nor residents of a foreign state, a sta-

Shortly after the dismissal of the Federal Fees Action, Skadden re-filed its claims against Angulo in the New York State Supreme Court for New York County. Immediately after Angulo filed his answer to Skadden's complaint, and before Angulo had served any discovery demands, Skadden moved for summary judgment. Under § 3214(b) of New York Civil Practice Law and Rules ("CPLR"), Skadden's summary judgment motion automatically stayed discovery.

Angulo opposed Skadden's summary judgment motion and, in his affidavit opposing the motion, pointed out that certain activities described in Skadden's bills and time sheets had never been completed or accomplished. Angulo's affidavits also identified several areas of discovery which would have enabled him to oppose at least part of Skadden's summary judgment motion. Angulo, therefore, requested the Court to lift the automatic discovery stay, and defer any determination of the summary judgment motion until after he had obtained discovery in those areas.

Justice Kornreich did not address Angulo's request to lift the discovery stay and granted summary judgment in Skadden's favor. (App., *infra.*, 1a-16a). Angulo thus had summary judgment entered against him even though he had no opportunity whatsoever to obtain discovery of documents which would have permitted Angulo to oppose at least part of Skadden's claims for fees. The total judg-

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tus which, it asserted, precluded it from invoking federal diversity jurisdiction. Notwithstanding Skadden's representation to Judge Berman that the foreign domiciliaries of some of its partners prevented it from ever invoking federal diversity jurisdiction, Skadden has continued to rely on diversity jurisdiction in another fees action entitled *Skadden v. Learning Time 2000* in the U.S. District Court in Delaware. Skadden filed the *Learning Time 2000* case and the federal action against Angulo almost simultaneously in late 2002. http://pacer.tnmd.uscourts.gov/dc/cgi-bin/pacer250.pl?puid=01089465241.

ment entered against Angulo, including interest and costs, was in the amount of was $1,238,890.31.

Angulo appealed to the Appellate Division of the New York State Supreme Court (First Judicial Department). The Appellate Division affirmed the grant of summary judgment in Skadden's favor, and did not address or even acknowledge Angulo's contention that he should have been granted discovery. (App., *infra*, 19a-20a.)

The New York Court of Appeals subsequently denied Angulo's motion for leave to appeal. (App., *infra*, 21a.)

B. The *Nemazee* Action

Prior to 1996, Angulo's company, Angulo Capital Corp. was a partner in a partnership known as First Capital Partners, along with another corporation, Nemazee Capital Corp. In 1996, Nemazee Capital Corp. commenced a lawsuit against Angulo and Angulo Capital Corp. ("the *Nemazee* Action," as defined above). In the *Nemazee* Action, Nemazee Capital Corp. demanded the judicial dissolution of First Capital Partners and the sale of the sole significant partnership asset, a Puerto Rican newspaper known as the *San Juan Star*, at a judicial auction. (App., *infra*, 2a.)

Angulo engaged Skadden to represent him and Angulo Capital Corp. in the *Nemazee* Action. Angulo opposed the dissolution of First Capital Partners and counterclaimed for an order permitting him to purchase *The San Juan Star* at a judicially-appraised value.

The *Nemazee* Action was very abbreviated. The parties agreed on streamlined procedures and did not serve interrogatories, requests for admissions, motions to dismiss or summary judgment motions. As a result of these streamlined procedures, the *Nemazee* Action, which was commenced in February 1996 was tried in June 1996.

(App., *infra*, 2a-3a). After the trial United States District Court Judge Robert Owen ordered the dissolution of First Capital Partners but also entered a judgment allowing Angulo to purchase *The San Juan Star* at a judicially appraised price. A hearing on the valuation of *The San Juan Star* followed. Despite these streamlined procedures, Skadden billed Angulo a total of $997,487 for the period through the trial and valuation hearing. Angulo paid the entirety of this amount.

The sole real issue on the *Nemazee* appeal was whether Judge Owen had correctly permitted Angulo to purchase *The San Juan Star* asset on the grounds that he, unlike Nemazee, had not engaged in any conduct contributing to the dissolution of First Capital Partners. Despite the straight forward nature of the appeal, Skadden billed Angulo a total of $617,598 for the appeal. During the appeal, Angulo began to suspect that Skadden was rampantly inflating its time charges and stopped paying Skadden's bills.

After the appeal, Angulo did not authorize Skadden to do any work and did not hear from Skadden. Skadden, however, continued to bill Angulo. For the period following the *Nemazee* appeal, Skadden's time sheets only referred generically to activities relating to purported "partnership dissolution activities," and were completely void of any detail, *e.g.*:

01/08/99 1.50 ATTENTION TO PARTNERSHIP DISSOLUTION ISSUES

01/11/99 1.50 ATTENTION TO PARTNERSHIP DISSOLUTION ISSUES

01/19/99 1.50 ATTENTION TO PARTNERSHIP DISSOLUTION ISSUES

01/20/99 1.50 ATTENTION TO PARTNERSHIP DISSOLUTION ISSUES

01/28/99	2.50	ATTENTION TO PARTNERSHIP DISSOLUTION ISSUES
02/03/99	1.50	ASSISTANCE RE: PARTNERSHIP DISSOLUTION ISSUES
02/05/99	2.00	ASSISTANCE RE: PARTNERSHIP DISSOLUTION ISSUES
02/10/99	2.00	ATTENTION TO PARTNERSHIP DISSOLUTION ISSUES
02/19/99	2.50	ATTENTION TO PARTNERSHIP DISSOLUTION ISSUES
02/22/99	1.50	ATTENTION TO PARTNERSHIP DISSOLUTION ISSUES
02/23/99	1.00	ATTENTION TO PARTNERSHIP DISSOLUTION ISSUES
03/03/99	2.50	ATTENTION TO PARTNERSHIP DISSOLUTION ISSUES
03/11/99	3.50	ATTENTION TO PARTNERSHIP DISSOLUTION MATTERS
03/17/99	2.50	ATTENTION TO PARTNERSHIP DISSOLUTION ISSUES
04/08/99	1.00	ATTENTION TO PARTNERSHIP DISSOLUTION ISSUES
04/16/99	2.50	ATTENTION TO PARTNERSHIP DISSOLUTION ISSUES
04/19/99	2.00	ATTENTION TO PARTNERSHIP DISSOLUTION ISSUES
04/28/99	1.50	ATTENTION TO PARTNERSHIP DISSOLUTION ISSUES
04/30/99	1.50	ATTENTION TO PARTNERSHIP DISSOLUTION ISSUES